

§ 99.27 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 99.28 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, shall constitute the exclusive record for decision.

Subpart D—Posthearing Procedures, Decisions

§ 99.31 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law. The presiding officer shall also fix the time for reply briefs, if permitted.

§ 99.32 Decisions following hearing.

(a) If the Assistant Secretary is the presiding officer, the Assistant Secretary shall issue the decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If the presiding officer is not the Assistant Secretary, the presiding officer shall certify the entire record, including the recommended findings and proposed decision, to the Assistant Secretary within 60 days after the time for submission of posthearing briefs has expired. The Assistant Secretary shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days of receipt of the recommended findings and proposed decision, file exceptions

and a supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary shall thereupon review the recommended decision and, within 45 days after the receipt of the exceptions to the recommended findings and proposed decision, issue the decision.

(c) The decision of the Assistant Secretary under this section shall be the final decision of the Secretary and shall constitute “final agency action” within the meaning of 5 U.S.C. 704. The Assistant Secretary’s decision shall be promptly served on all parties, and amici, if any.

§ 99.33 Effective date of Assistant Secretary’s decision.

If, in the case of a hearing pursuant to § 98.18(b) of this chapter, the Assistant Secretary concludes that a Plan amendment does not comply with the Federal statutes and regulations, the decision that further payments will not be made to the Grantee, or payments will be limited to categories under other parts of the Block Grant Plan not affected, shall specify the effective date for the withholding of Federal funds.

PART 100—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF HEALTH AND HUMAN SERVICES PROGRAMS AND ACTIVITIES

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AUTHORITY: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204, Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

SOURCE: 48 FR 29200, June 24, 1983, unless otherwise noted.

§100.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§100.2 What definitions apply to these regulations?

Department means the U.S. Department of Health and Human Services (HHS).

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

Secretary means the Secretary of HHS or an official or employee of the De-

partment acting for the Secretary under a delegation of authority.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§100.3 What programs and activities of the Department are subject to these regulations?

The Secretary publishes in the FEDERAL REGISTER a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§100.4 [Reserved]

§100.5 What is the Secretary's obligation with respect to Federal inter-agency coordination?

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§100.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with §100.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with local elected officials regarding the change. The Department may establish deadlines by which states are required to

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inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 100.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

(a) For those programs and activities selected by a state process under § 100.6, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the Department in its discretion deems appropriate.

§ 100.8 How does the Secretary provide states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Secretary gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance

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other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 100.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedures in § 100.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all Federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 100.6.

(b)(1) The single point of contract is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for review under a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a non-selected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 100.10 of this part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 100.10 of this part,

when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

(f) If an applicant receives comments under § 100.9(a)(2), (c) or (d) of this part, it must forward such comments to the Department with its application materials.

§ 100.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

- (1) Accepts the recommendation;
- (2) Reaches a mutually agreeable solution with the state process; or
- (3) Provides the single point of contact with such written explanation of the decision as the Secretary in this or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

- (1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or
- (2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written explanation 5 days after the date such notification is dated.

§ 100.11 What are the Secretary's obligations in interstate situations?

- (a) The Secretary is responsible for:
 - (1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;
 - (2) Notifying appropriate officials and entities in states which have

adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 100.10 of this part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 100.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 100.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) *Simplify* means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) *Consolidate* means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) *Substitute* means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

§ 100.13 May the Secretary waive any provision of these regulations?

In an emergency, the Secretary may waive any provision of these regulations.

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